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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/938,670	08/27/2001	Jens Petersen	60117.000007	2509

7590 10/31/2007
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EXAMINER

MILLER, CHERYL L

ART UNIT	PAPER NUMBER
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3738

MAIL DATE	DELIVERY MODE
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10/31/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

09/938,670

Applicant(s)

PETERSEN ET AL. ED

Examiner

Cheryl Miller

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 June 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2,5,7-12 and 44-53 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2,5,7-12 and 44-53 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>6/13/07</u> | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after allowance or after an Office action under *Ex Parte Quayle*, 25 USPQ 74, 453 O.G. 213 (Comm'r Pat. 1935). Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, prosecution in this application has been reopened pursuant to 37 CFR 1.114. Applicant's submission filed on June 13, 2007 has been entered.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 2, 5, 7-12, 45, and 48-53 are rejected under 35 U.S.C. 103(a) as being unpatentable over Annis et al; National Research Development Corporation, (EP 0 248 544 A1, cited in IDS). Annis discloses a biostable hydrogel (col.2, lines 32-38) for use as an endoprosthesis comprising polyacrylamide that includes acrylamide cross-linked with methylene bis-acrylamide (col.3, lines 29-38). Annis's hydrogel has a water content of 95 weight percent. Annis discloses a composition having the same monomers claimed by the applicant, however Annis is silent to mention material properties of the hydrogel (elasticity, viscosity, etc). It would have been obvious to one having ordinary skill in the art at the time the invention was made to have the properties claimed, since wherein the general conditions (monomers present, water,

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acrylamide and methylene bis acrylamide) of a claim are disclosed in the prior art, it is not inventive to discover the optimum or workable ranges (viscosity, elasticity, etc) by routine experimentation. *In re Aller*, 220 F.2d 454, 456, 105 USPQ 233, 235, (CCPA 1955).

Claims 1, 2, 5, 7-12, 44-46, and 48-53 are rejected under 35 U.S.C. 103(a) as being unpatentable over Purkait, Mentor Corporation (EP 0 895 785 A2, cited in IDS). Purkait discloses a biostable hydrogel for use as an endoprosthesis comprising polyacrylamide that includes acrylamide cross-linked with methylene bis-acrylamide (pg.6 line 35-pg.8 line 15; example A). Purkait's hydrogel has an acrylamide percent of 1-9 by weight (pg.7 lines 55-57). Purkait discloses a composition having the same monomers claimed by the applicant in the same weight percent, however Purkait is silent to mention material properties of the hydrogel (elasticity, viscosity, etc). It would have been obvious to one having ordinary skill in the art at the time the invention was made for Purkait to have the properties claimed, since wherein the general conditions (monomers present, water, acrylamide and methylene bis acrylamide) of a claim are disclosed in the prior art, it is not inventive to discover the optimum or workable ranges (viscosity, elasticity, etc) by routine experimentation. *In re Aller*, 220 F.2d 454, 456, 105 USPQ 233, 235, (CCPA 1955).

Claim 47 is rejected under 35 U.S.C. 103(a) as being unpatentable over Purkait, Mentor Corporation (EP 0 895 785 A2, cited in IDS) in view of Vogel et al. (US 6,660,301 B1). Purkait discloses a polyacrylamide hydrogel for use as an endoprosthesis substantially as claimed (see above). Purkait does not however, disclose the use of cells on the endoprosthesis. Vogel teaches in the same field of polyacrylamide hydrogels, the use of a layer of cells on the endoprosthesis for the purpose of increased biocompatibility and attachment (col.6, lines 1-20; col.10, lines 30-

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33). It would have been obvious to one having ordinary skill in the art at the time the invention was made to combine Vogel's teaching of using cells on polyacrylamide endoprostheses, with the polyacrylamide endoprosthesis of Purkait, in order to provide an endoprosthesis with increased biocompatibility and surface attachment.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cheryl Miller whose telephone number is (571) 272-4755. The examiner can normally be reached on Monday-Friday 7:30am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Corrine McDermott can be reached on (571) 272-4755. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Cheryl Miller/